

Appeal from a decision of California State Office, Bureau of Land Management, rejecting oil and gas lease offer, CA 9881.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: First-Qualified Applicant

A junior over-the-counter noncompetitive oil and gas lease offer is properly rejected where the lands have been leased to a senior offeror and the junior offeror fails to provide valid reasons why the senior offer should be considered defective.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Applications: 640-acre Limitation

Where a junior offeror challenges the issuance of a lease to a senior offeror on the basis that the senior offer improperly included 320 acres of land not available for noncompetitive leasing and thereby asserts that the lease could have only issued for less than 640 acres of land, the appeal is properly rejected where the record shows that, irrespective of the 320 acres in question, there still remained 640 acres of other public land within the lease offer as required by 43 CFR 3110.1-3(a).

APPEARANCES: John D. LaRue, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE BURSKI

John D. LaRue has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated July 15, 1982, which rejected in part his over-the-counter, noncompetitive oil and gas lease offer CA 9881, which was filed with the California State Office on May 13, 1981. The offer was rejected as to the N 1/2 W 1/2 E 1/2 of sec. 30, T. 14 S., R. 13 E., San Bernardino meridian, because the lands were included in oil and gas lease CA 9399, which issued effective July 1, 1982, pursuant to an over-the-counter offer filed on February 5, 1981, prior to appellant's offer.

Appellant has appealed, stating:

It is my contention that the application CA 9399 was faulty in that the approximately 320 acres contained in Sec. 29 of that application were terminated leases (LA 0166761). Since this leaves only 600 acres which could have been leased under CA 9399, I believe that CA 9399 should have been rejected in total, in which case my application CA 9881 would have held priority.

[1] A noncompetitive oil and gas lease may only be issued to the first-qualified applicant, 30 U.S.C. § 226(c) (1976). A junior offer is properly rejected to the extent that it includes lands designated in a senior offer and the junior offeror fails to provide valid reasons why the senior offer should be considered defective. Bob G. Howell, 75 IBLA 113 (1983); Irvin Wall, 71 IBLA 209 (1983).

From our review of the record we find that appellant has not shown that the senior lease offer was, in fact, defective. Appellant argues that lease CA 9399 was not properly issued because it included 320 acres of public land in sec. 29, T. 14 S., R. 13 E., San Bernardino meridian, that had formerly been contained within a terminated lease. 1/ From this we are to conclude that this land could not properly have been available for a noncompetitive "over-the-counter" lease application.

[2] Although appellant does not specifically state the basis for this challenge, he apparently relies on the 640-acre limitation as embodied in 43 CFR 3110.1-3(a) (1982). 2/ That regulation provides that:

No offer may be made for less than 640 acres except where the offer is accompanied by a showing that the lands are in an approved unit or cooperative plan of operation or such a plan has been approved as to form by the Director of the Geological Survey or where the land is surrounded by lands not available for leasing under the Act.

First, we must point out that appellant's argument must fail simply because his mathematics are erroneous. Even if we accepted the argument that 320 acres in sec. 29 were not properly subject to over-the-counter offers and, therefore, should have been excluded from the lease, the offer covered a total of 960 acres, leaving a balance of 640 acres within the offer. Accordingly, as there still would be adequate acreage, the 640-acre rule would not have been violated and the lease would not be defective for this reason.

Although it is not necessary for us to reach the question of the status of the 320 acres within sec. 29, we note that appellant's contention as to its nonavailability is similarly without merit.

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1/ The lands under prior lease in sec. 29 consisted of the SW 1/4 NE 1/4, E 1/2 NW 1/4, SW 1/4, SW 1/4 SE 1/4.

2/ While the exact wording was changed by amendments promulgated on July 22, 1983, the substance of the regulation remains the same. See 48 FR 33676 (July 22, 1983).

Appellant has submitted a copy of a BLM notice of lands available for simultaneous oil and gas filings, list 90, dated June 1967, which included parcel 90-16, containing the lands within lease LA-016671 described as the SW 1/4 NE 1/4, E 1/2 NW 1/4, SW 1/4, and the SW 1/4 SE 1/4 sec. 29, T. 14 S., R. 13 E., San Bernardino meridian. That notice states that the listed lands were subject to simultaneous filings of lease offers in accordance with 43 CFR 3123.9 (1967) (the governing regulations then in effect). The successful drawee list for 1967 also shows that there were no offers received for parcel 90-16. Although the lease files do not show what has transpired from 1967 to 1982, it should be noted that once the lands had been posted as available for simultaneous filing and no offers were received during the period, they could thereafter be made available for all forms of leasing in accordance with the governing regulations 43 CFR 3123.9(f) (1967). See David A. Provinse, 38 IBLA 347, 351 (1978). They would thus become subject to over-the-counter leasing. We note that appellant has not even alleged that the land in sec. 29 was leased subsequent to 1967. Thus, on the basis of the record before us, inclusion of the land in sec. 29 in lease CA 9399 was proper.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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James L. Burski  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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Will A. Irwin  
Administrative Judge

